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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY EUGENE WILSON,

Defendant and Appellant.

D052986

(Super. Ct. No. SCD201547)

APPEAL from a judgment of the Superior Court of San Diego County, Cynthia Bashant, Judge. Affirmed.

Larry Eugene Wilson appeals a judgment arising out of his conviction of multiple offenses, including forcible rape, forcible sodomy, and kidnapping for the purpose of rape. He contends the court erred in admitting forensic nurse examiner Claire Nelli's testimony that the victim's injuries were consistent with nonconsensual sexual intercourse. We affirm the judgment.

## FACTS AND PROCEDURAL BACKGROUND

On July 10, 1999, victim Stacey W. and her friends went to Canes Bar and Grill in Mission Beach. While at Canes, Stacey socialized with her friends and drank alcohol.

At about 1:45 a.m., Stacey escorted one of her friends out of Canes and into a taxi. As she walked back to the bar to find the rest of her friends, Stacey heard a man say "excuse me" or "Stacey" from inside a parked car. Realizing that she did not know the man, Stacey turned to walk away. As she walked away, the man grabbed Stacey and forced her into the passenger side of the car. Stacey identified Wilson as the man who grabbed her.

Once Stacey was inside the car, Wilson punched her in the face and threatened to kill her. Wilson began driving and eventually stopped the car in a secluded parking lot. Wilson then pinned Stacey down, tore off her underwear and repeatedly penetrated her vagina and anus with his penis. Wilson then resumed driving, stopped the car in another parking lot and again repeatedly penetrated Stacey's vagina with his penis.

After Wilson once again resumed driving, he told Stacey that he planned to kill her because she had seen his face. Stacey falsely responded that Wilson should not kill her because she had a two-year-old son at home who needed his mother. At that point, Wilson's demeanor changed, and he demanded that Stacey remove her jewelry. After Stacey complied with Wilson's demand, he pulled over to the side of the road, let Stacey out of the car and drove away. Stacey flagged down a passing limousine and told the driver she had been raped. The driver took Stacey to her apartment.

When Stacey arrived at her apartment, her roommate called the police. An ambulance transported Stacey to Villa View Community Hospital where forensic nurse examiner Claire Nelli conducted a sexual assault examination. Nelli noted bruising on Stacey's leg and face. A vaginal examination revealed substantial abrasion, bruising, and other trauma. Nelli also collected physical evidence from Stacey's body.

In 2002, the San Diego Police Department Crime Laboratory analyzed and extracted DNA evidence from vaginal swabs taken during Stacey's sexual assault examination. In 2006, the crime lab was informed of a match between Wilson, a subject in Kansas' DNA database, and the unknown DNA sample taken from Stacey's vaginal swab. A San Diego Police Department criminalist confirmed the match.

Wilson was arrested and charged with four counts of forcible rape, one count of forcible sodomy, and one count of kidnapping for the purpose of rape. The charging information also alleged as to the forcible rape and forcible sodomy counts that Wilson kidnapped and substantially increased the risk of harm to Stacey. A jury convicted Wilson on all counts and found all special allegations true. The court sentenced Wilson to a total term of 58-years-to-life in prison.

## DISCUSSION

Wilson contends the trial court erred in allowing Nelli to testify that the injuries to Stacey's body and genitals were consistent with nonconsensual sexual intercourse. More specifically, Wilson asserts that Nelli's testimony amounted to an improper opinion as to his guilt. As a threshold matter, respondent contends Wilson has forfeited this issue on appeal by failing to object at trial.

1. *Preservation of the Issue for Appeal by Motion in Limine*

The admissibility of evidence will not ordinarily be reviewed on appeal absent a sufficient objection in the trial court. (*People v. Pineda* (1967) 253 Cal.App.2d 443, 465.) A motion in limine to exclude evidence is sufficient manifestation of an objection to preserve an issue for appeal when it satisfies the basic requirements of California Evidence Code section 353. (*People v. Rowland* (1992) 4 Cal.4th 238, 264, fn. 3.) (All statutory references are to the Evidence Code.) The requirements are threefold: "(1) a specific legal ground for exclusion is advanced and subsequently raised on appeal; (2) the motion is directed to a particular, identifiable body of evidence; and (3) the motion is made at a time before or during trial when the trial judge can determine the evidentiary question in its appropriate context." (*People v. Morris* (1991) 53 Cal.3d 152, 190, disapproved on another ground in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.)

Here, Wilson's pretrial motion in limine satisfied section 353's requirements. The motion rested on the same ground he urges here—that Nelli's testimony regarding Stacey's injuries amounted to improper opinion as to guilt. Wilson specifically identified and objected to Nelli's probable testimony that Stacey's injuries were consistent with nonconsensual sexual intercourse. Finally, the trial judge thoroughly considered the alleged objectionable testimony in the evidentiary context it would likely arise in at trial and ruled that Nelli could testify only if the prosecutor laid a proper foundation. Accordingly, Wilson's motion in limine sufficed to preserve this issue for appeal, and we address his contentions on the merits.

2. *Propriety of Nelli's Testimony Regarding Stacey's Injuries*

We review a trial court's determination of whether to admit or exclude evidence for abuse of discretion. (*People ex rel. Lockyer v. Sun Pacific Farming Co.* (2000) 77 Cal.App.4th 619, 639-640.) "The trial court's 'discretion is only abused where there is a clear showing [it] exceeded the bounds of reason . . . .' [Citation.]" (*Ibid.*)

A witness may not testify as to a defendant's guilt. (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 77.) "[T]he trier of fact is as competent as the witness to weigh the evidence and draw a conclusion on the issue of guilt." (*People v. Torres* (1995) 33 Cal.App.4th 37, 47.) However, an expert witness may offer an opinion based on her experience, training and education, related to a subject "sufficiently beyond common experience that the opinion of an expert would assist the trier of fact[.]" (§ 801.)

Here, Nelli's testimony related to her years of experience as a SART (Sexual Assault Response Team) nurse. Nelli testified that the amount of body and genital injury and the nature and positioning of the genital injury were, in her experience, consistent with the history Stacey gave. In rape prosecutions, courts routinely admit expert testimony that a victim's injuries are consistent with nonconsensual sexual intercourse (see, e.g., *People v. Hatch* (2000) 22 Cal.4th 260, 265; *People v. Espinoza* (1992) 3 Cal.4th 806, 813, overruled on other grounds in *People v. Hill* (1998) 17 Cal.4th 800), and the California Supreme Court has implicitly endorsed the notion that genital trauma can suggest lack of consent (see *People v. Berryman* (1993) 6 Cal.4th 1048, 1084 [citing abrasions to pelvic region and blood cells found in vagina as evidence of lack of consent]).

Nelli plainly did not opine as to Stacey's or Wilson's veracity or state of mind, or as to Wilson's guilt. Nelli's statement that Stacey's injuries were consistent with nonconsensual sexual intercourse was not a conclusive assertion of causation. In fact, Nelli freely admitted on cross-examination that consensual sex could cause the injuries she described. The trial judge instructed the jury that it was the sole arbiter of witnesses' credibility (see CALCRIM No. 226), and, absent a showing to the contrary, we assume the jury followed the trial judge's instruction to make its own determination regarding the reliability of Nelli's testimony. (*People v. Mickey* (1991) 54 Cal.3d 612, 689, fn. 17.) Nelli's testimony did not amount to an improper opinion as to Wilson's guilt, and accordingly, the superior court did not abuse its discretion in admitting it.

#### DISPOSITION

The judgment is affirmed.

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McINTYRE, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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IRION, J.